

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 209

Revised Uniform Anatomical Gift Act

SPONSOR(S): Schwartz

TIED BILLS:

IDEN./SIM. BILLS: SB 492

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Holt	Calamas
2)	Civil Justice & Courts Policy Committee			
3)	Health & Family Services Policy Council			
4)	Health Care Appropriations Committee			
5)	Criminal & Civil Justice Appropriations Committee			
6)	Full Appropriations Council on General Government & Health Care			

SUMMARY ANALYSIS

The bill creates the *Revised Uniform Anatomical Gift Act* and substantially rewrites the existing statutes governing anatomical gifts and the statutory provisions governing organizations that collect organs and tissue. The bill repeals eight statutory sections, which are replaced with twenty-three statutory sections that address anatomical donations, authority in handling and processing donated bodies and parts and the relationships between organ procurement organizations and hospitals and medical examiners.

The bill has an indeterminate fiscal impact (see fiscal analysis).

The bill takes effect October 1, 2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Florida Law

In 1969, the Legislature enacted legislation modeled after the national Uniform Anatomical Gift Act. Part V of chapter 765, F.S., establishes a process by which individuals, their families, or others may donate organs and tissue. One of the underlying expressions of legislative intent is to encourage the development of reconstructive medicine and surgery and aid medical research by regulating the gift of the body, or parts of the body, after the death of a donor.

Section 765.512, F.S., provides guidelines by which any person who makes a will may give all or part of his or her body for the purpose of transplantation or for medical research. The statute provides that an adult donor's anatomical gift, unless revoked by the donor, is irrevocable. The consent or concurrence of another person prior to the procurement of the organ or tissue is not required. However, it is common practice for those entities procuring organs or tissues to acquiesce to the wishes of the family or guardian even if it modifies or overrides a decedent's expressed wish to make an anatomical gift. The donee is prohibited from accepting the gift if the donee has actual notice of contrary indications by the donor or actual notice that a member of a prior class opposes the gift.¹

In the absence of a written document making an anatomical gift, and provided there is no evidence to the contrary of the deceased donor's wishes, any family member from the specified classes of relatives or persons may make an anatomical gift of a decedent's body or part thereof, unless there is opposition from a member of the same or higher specified class of relatives. Persons who may donate all or part of a decedent's body include the spouse, an adult son or daughter, either parent, an adult brother or sister, a grandparent, the guardian of the person at the time of death, or a representative ad litem appointed by the court.²

A person may make an anatomical gift by a will or other signed document including a designation made during the application or renewal for a state-issued driver's license. If the donation is included in the donor's will, the donation becomes effective upon the donor's death without waiting for probate. The document must be executed in the presence of two witnesses.³

¹ Section 765.512(4), F.S.

² Section 765.512(3), F.S.

³ Section 765.514, F.S.

An amendment or revocation of an anatomical gift can be made through:

- A signed statement delivered to the donee;
- An oral statement made in the presence of two persons and communicated to the donor's family or attorney or to the donee;
- An oral statement made during a terminal illness or injury to an attending physician; or
- A signed document found on the donor's person or in the donor's effects.⁴

The Florida Coalition on Donation

The Florida Coalition on Donation (Coalition) was founded in 1997, as a non-profit organization and is a member of the national Coalition on Donation. The Coalition is an alliance of organ, tissue and eye donor programs in Florida and individuals and organizations that hold a common interest in life-saving and life-enhancing donation and transplantation. The overriding mission of the Coalition is to inspire all people to donate life through organ and tissue donation.

The primary reason for forming the Florida Coalition was to create an entity that could coordinate and handle large organ donor informational programs, including implementing national organ donor campaigns. The Coalition uses a variety of outreach efforts, including Get Carded, a college based campaign; Workplace Partnership For Life, an employer driven program; and billboard and movie theatre advertisements.

Purpose and Uses of Anatomical Gifts

Anatomical gifts may be made for purposes of transplantation, therapy, research, or education.⁵ In general terms, transplantation refers to the removal and grafting of one individual's body part into the body of another individual. Organ donation is the process of surgically removing an organ or tissue from one person (the donor) and placing it into another person (the recipient). Research is a process of testing and observing, the goal of which is to obtain generalized knowledge, while therapy involves the processing and use of a donated part to develop and provide amelioration or treatment for a disease or condition. Education is intended to use the whole body or parts to teach medical professionals and others about human anatomy and its characteristics.⁶ Transplantation is necessary because the recipient's organ has failed or has been damaged by disease or injury. Organ transplantation is one of the great advances in modern medicine. The need for organ donors is much greater than the number of people who actually donate. In 2008, there were 12,936 organs donated.⁷ As of March 7, 2009, there were 101,002 candidates on a waiting list for an organ.⁸ Last year, the Legislature established the Joshua Abbott Organ and Tissue Registry ("online registry") to increase and facilitate the donation and availability of organs, eyes, and tissue.⁹

Organs and tissues that can be transplanted include:

- Liver
- Kidney
- Pancreas
- Heart
- Lung
- Intestine

⁴ Section 756.516, F.S.

⁵ Section 765.513, F.S.

⁶ Revised Uniform Anatomical Gift Act (2006) last revised or amended in 2007; Comments by the National Conference of Commissioners on Uniform State Laws on the Revised Uniform Anatomical Gift Act (2006). Available online at: <http://www.anatomicalgiftact.org/DesktopDefault.aspx?tabindex=1&tabid=633> (last visited on March 3, 2009).

⁷ The Organ Procurement and Transplantation Network, Data: Donors Recovered in the U.S. by Donor Type (February 2009). Available online at: <http://www.optn.org/latestData/rptData.asp> (last visited March 7, 2009).

⁸ The Organ Procurement and Transplantation Network, Data: Waiting List Candidates (March 7, 2009). Available online at: <http://www.optn.org/data/> (last visited on March 7, 2009).

⁹ Chapter 2008-222, L.O.F.

- Lung
- Cornea
- Middle Ear
- Skin
- Bone
- Bone Marrow
- Heart valves
- Connective tissue

When an individual dies they are evaluated for donor suitability given their current and past medical history and their age. The Organ Procurement Organizations (OPOs) determine the medical suitability of a donation.

Organ Procurement Organizations (OPOs)

OPOs become involved when a patient is identified as brain dead and therefore becomes a potential donor. The OPOs coordinate the logistics between the organ donor's family, the donor organs, the transplant center(s), and the potential transplant candidate.

OPOs provide organ recovery services to hospitals located within designated geographical areas of the U.S. OPOs are non-profit organizations and, like transplant hospitals, are members of the Organ Procurement and Transplantation Network. Each OPO has its own board of directors and a medical director who is usually a transplant surgeon or physician.

OPOs employ highly trained professionals called procurement coordinators who carry out the organization's mission. Once contacted by the hospital with a potential donor, OPO staff:

- conduct a thorough medical and social history of the potential donor to help determine the suitability of organs for transplantation
- work with hospital staff to offer the option of donation to the donor family
- ensure that the decision to donate is based on informed consent
- manage the clinical care of the donor once consent for donation is finalized
- enter the donor information into the UNOS computer to find a match for the donated organs
- coordinate the organ recovery process with the surgical teams and provide follow-up information to the donor family and involved hospital staff regarding the outcome of the donations

From the moment of consent for donation to the release of the donor's body to the morgue, all costs associated with the organ donation process are billed directly to the OPO.¹⁰

Effects of the Bill

The bill creates the *Revised Uniform Anatomical Gift Act* and substantially rewrites the existing statutes governing anatomical gifts and the statutory provisions governing organizations that collect organs and tissue. The bill repeals eight statutory sections, which are replaced with twenty-three statutory sections that address anatomical donations, authority in handling and processing donated bodies and parts and the relationships between organ procurement organizations and hospitals and medical examiners.

The bill:

- Repeals current statutory sections that relate to the manner and process of indicating that an individual wishes to have all or part of his/her body donated for transplantation, therapy, research, or education (See s. 765.512, 765.513, 765.515, 765.516, and 765.517, F.S.).
- Repeals the recommended donor card format from law (See s.765.514, F.S.).
- Provides definitions for: adult, agent, anatomical gift, decedent, disinterested witness, document of gift, donor, donor registry, driver's license, eye bank, guardian, hospital, identification card,

¹⁰ The Organ Procurement and Transplantation Network, About Transplantation: Matching Process. Available online at: <http://www.optn.org/about/transplantation/matchingProcess.asp> (last visited on March 7, 2009).

know, organ procurement organization, parent, part, person, physician, procurement organization, prospective donor, reasonably available, recipient, record, refusal, sign, state, technician, tissue, tissue bank, and transplant hospital.

- Provides that an individual may make an anatomical gift prior to their death by having their driver's licensed imprinted with a symbol, providing a statement in a living will; or in the case of a terminal illness or injury, a person communicates in the presence of two witnesses their desire to make an anatomical gift.
- Provides that an anatomical gift may be made by a person who is: emancipated; at least 16 years of age; or a parent, agent, or legal guardian of the person who would like to make the donation.
- Provides that anyone who makes their desire to donate known may use a donor card or included on a donor registry. If an individual is unable to sign a legal record stating their desire to be a donor of an anatomical gift then at least two adults (one must be a disinterested party) must witness a person sign a legal record at the direction of the donor. If a driver's license or identification card denotes a person's desire to be an anatomical gift donor and the card is revoked, suspended, expired, or cancelled the gift is still valid.
- Provides that an anatomical gift that is donated in a will takes effect upon the donor's death no matter if the will is in probate or if the will is invalidated.
- Provides that anatomical gift may be amended or revoked prior to the donor's death.
- Provides that an individual may refuse to make an anatomical gift of the their body or a body part by having a signed record, will, or any other form of communication that is witnessed by at least two adults, of which, one must be a disinterested witness.
- Provides that if a person has not expressly indicated they are opposed to making a donation, a person other than the donor is barred from making, amending, or revoking an anatomical gift of the donor's body or part if the donor made an anatomical gift. However, a donor's revocation of an anatomical gift is not a refusal and does not bar another person such as an agent or legal guardian from making an anatomical gift of the donor's body or body part.
- Provides who may make an anatomical gift of a decedent's body or body part.
- Provides how a person may make, amend, or revoke an anatomical gift of a decedent's body or body part.
- Provides that an anatomical gift may be made to a specific person, institution, or purpose if they are specifically named in the document of gift.
- Provides that certain persons must make a reasonable search of an individual who is dead or near death to find a document of gift or other information that may identify the individual as a donor or an individual who has made a refusal of donation. A person is not subject to criminal or civil liability for failing to make a reasonable search, but may be subject to administrative sanctions.
- Provides that a person is not required to deliver a document of gift or refusal to donate during a donor's lifetime to be effective. Upon or after death, an individual in possession of such a document must allow examination and copying of the document by an appropriate person.
- Provides that once a person is referred to a procurement organization, the organization must make a reasonable search of the statewide organ and tissue donor registry or any other registry that exists for the geographical area in which the person resides.
- Provides that a procurement organization must be allowed reasonable access to information contained in the records of the registry(s). The procurement organization is also allowed to conduct and reasonable examination of an individual at or near death to ensure the medical suitability of a part that could be the subject of an anatomical gift is suitable for transplantation, therapy, research, or education.
- Provides that a treating physician or the physician who determines the time of the decedent's death may not participate in the procedures for removing or transplanting a part from the decedent.
- Provides that each hospital in the state must enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.
- Provides that a person who intentionally falsifies, forges, conceals, defaces, obliterates a document of a gift, revocation, refusal, or amendment of a document of gift commits a third degree felony.

- Provides immunity from civil liability, criminal prosecution, or administrative proceedings if a person acts in accordance with the Revised Uniform Anatomical Gift Act.
- Provides that a person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked. And if the document of gift is valid, the law of the state governs the interpretation of the document.
- Provides for definitions of advance healthcare directive, declaration, healthcare decision. Additionally, if an advanced directive is in conflict with the express or implied terms of a potential anatomical gift with regards to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy the prospective donor's attending physician and prospective donor will confer to resolve the conflict. If the donor is incapable of resolving the conflict then an agent may resolve the conflict on their behalf. The conflict must be resolved as expeditiously as possible. Until the conflict is resolved, measures to ensure the medical suitability of the part may not be withheld or withdrawn unless, the measure is conflicts with appropriate end-of-life care.
- Provides that a medical examiner will cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.
- Provides that if a postmortem examination is performed it should be conducted in a manner and period of time compatible with preserving the body or body part. If the recovery of a body part for donation conflicts with the postmortem examination the medical examiner is to consult with the procurement organization. The medical examiner can supervise the procurement process and deny recovery of a part if the part being recovered is involved in determining the decedent's cause or manner of death.
- Provides that a medical examiner will release upon request the name, contact information, and available medical and social history of the decedent, to include the postmortem results, to a procurement organization if the decedent's body is medically suitable for transplantation, therapy, research, or education.
- Repeals legislative intent and definitions (See s. 765.510, and 765.511, F.S.).
- Revises cross-references to conform to the changes in the bill.

B. SECTION DIRECTORY:

Section 1. Creates s. 765.5101, F.S., relating to a short title.

Section 2. Creates s. 765.5102, F.S., relating to definitions.

Section 3. Creates s. 765.5103, F.S., relating to applicability.

Section 4. Creates s. 765.5104, F.S., relating to persons who may make an anatomical gift before the donor's death.

Section 5. Creates s. 765.5105, F.S., relating to manner of making an anatomical gift before the donor's death.

Section 6. Creates s. 765.5106, F.S., relating to amending or revoking an anatomical gift before the donor's death.

Section 7. Creates s. 765.5107, F.S., relating to refusal to make an anatomical gift; effect of refusal.

Section 8. Creates s. 765.5108, F.S., relating to preclusive effect of an anatomical gift, amendment, or revocation.

Section 9. Creates s. 765.5109, F.S. relating to who may make an anatomical gift of a decedent's body or part.

Section 10. Creates s. 765.5110, F.S., relating to the manner of making, amending or revoking an anatomical gift of a decedent's body or part.

Section 11. Creates s. 765.5111, F.S., relating to the persons who may receive an anatomical gift and the purpose of the gift.

Section 12. Creates s. 765.5112, F.S., relating to search and notification.

Section 13. Creates s. 765.5113, F.S., relating to the delivery of a document of a gift not required and right to examine.

Section 14. Creates s. 765.5114, F.S., relating to the rights and duties of procurement organizations and others.

Section 15. Creates s. 765.5115, F.S., relating to the coordination of procurement and use.

Section 16. Creates s. 765.5117, F.S., relating to prohibited acts.

Section 17. Creates s. 765.5118, F.S., relating to immunity.
Section 18. Creates s. 765.5119, F.S., relating to the law governing validity and choice of law as to execution of a document of a gift.
Section 19. Transfers and renumbers s. 765.5155, F.S., to 765.5120, F.S.
Section 20. Transfers and renumbers s. 765.51551, F.S., to 765.51201, F.S.
Section 21. Creates s. 765.5121, F.S., relating to the effect of an anatomical gift on an advance healthcare directive.
Section 22. Creates s. 765.5122, F.S., relating to the cooperation between medical examiners and procurement organizations.
Section 23. Creates s. 765.5123, F.S., relating to the facilitation of an anatomical gift from a decedent whose body is under the jurisdiction of a medical examiner.
Section 24. Creates s. 765.5124, F.S., relating to the uniformity of application and construction.
Section 25. Creates s. 765.5125, F.S., relating to electronic signatures in global and national commerce act.
Section 26. Repeals ss. 765.510, 765.511, 765.512, 765.513, 765.514, 765.515, 765.516, and 765.517 F.S.
Section 27. Amends s. 381.0041, F.S., to correct a cross reference.
Section 28. Amends s. 765.521, F.S., relating to donations as part of drivers license or identification card process.
Section 29. Amends s. 765.522, F.S., relating to duty of certain hospital administrators; liability of hospital administrators, and organ procurement organizations, eye banks, and tissue banks.
Section 30. Provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not applicable.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

The bill creates a third degree felony. The Criminal Justice Impact Conference has not estimated the impact of the additional felony. The analysis will be updated if the Criminal Justice Impact Conference assigns a value to the impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill sponsor plans on offering a proposed strike-all amendment that conforms to Senate bill 766.

Section 765.5103 of the bill appears to be trying to make the provisions of the bill apply retroactively to all anatomical gifts entered into by donors under current law. It is not clear whether the language provided in the bill would have this effect.

Section 765.5105(4) of the bill provides that an anatomical gift that is donated in a will takes effect upon the donor's death no matter if the will is in probate or if the will is invalidated. This may conflict with current probate and will contest laws under Chapters 731 and 732, F.S.

The language in section 765.5106 and section 765.5108 appear to conflict with one another. It is unclear who may revoke or amend an anatomical gift before the donor's death; or whether anyone may do so.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES